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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,854	12/16/2003	Robert Frigg	10139/13801	3166
30636	7590	04/02/2010	EXAMINER	
FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038				SCHAPER, MICHAEL T
ART UNIT		PAPER NUMBER		
3775				
		MAIL DATE		DELIVERY MODE
		04/02/2010		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/735,854	FRIGG, ROBERT	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL T. SCHAPER	3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 November 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-36 is/are pending in the application.
- 4a) Of the above claim(s) 8-12, 17-19 and 21-36 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-7 and 13 is/are rejected.
- 7) Claim(s) 14-16, 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Appeal***

A decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review. However the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims, therefore prosecution is reopened.

The TC Director's approval is placed on the action reopening prosecution below.

### ***Claim Objections***

Claim 4 is objected to because of the following informalities:

Claim 4, line 3 should read "axis of rotation".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-4 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Possis (US RE31040).

Possis discloses an implant comprising at least one coupler (39) having at least two connecting elements (64,66) capable of engaging a first member to a second

member; wherein the connecting elements permit the first member to rotate with respect to the second member (see FIG. 5), and wherein the connecting elements are pins (see FIG. 4) that are pivot-mounted in the first member; wherein the at least one coupler has an outer perimeter (inherent) and the connecting elements extend from the outer perimeter (see FIG. 4); wherein the at least one coupler has an outer perimeter (inherent) and the connecting elements are spaced along the outer perimeter along a common axis defining an axes of rotation (see FIG. 5's disclosure of rotation); wherein the first member has a through hole for receiving the coupler (see FIGS. 4-5); wherein the connecting elements are concentrically supported in the through hole formed in the first member (*i.e.* the axes of extension for each of the connecting elements are collinear); wherein the connecting elements are *capable* of elastic deformation; wherein the connecting elements are tabs which are sized and configured to contact a through hole formed in the first member so that the first member can rotate with respect to the at least one coupler (see FIG. 4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Possis (US RE31040) in view of Tybus (US 2877792).

Possis discloses the claimed invention except for the at least one coupler including a borehole for receiving the second member.

Tybus discloses a valve with a coupler (e.g. 24, in view of FIGS. 3-4) including a borehole (31) capable of receiving a second member for permitting a more positive although retarded return flow of the liquid (see col. 2 / lines 38-44).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to have modified the device of Possis with a coupler including a borehole capable of receiving a second member in view of Tybus for permitting a more positive although retarded return flow of the liquid.

#### ***Allowable Subject Matter***

Claims 14-16 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL T. SCHAPER whose telephone number is (571)270-7413. The examiner can normally be reached on M-F, 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3775

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T. S./  
Examiner, Art Unit 3775

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